IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

MFA.No. 156 of 2003()

OPMV.1059/1996 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT: CLAIMANT/APPELLANT:

V.M. KOCHU MUHAMMED, S/O. MUHAMMED,
PERITHODUTH HOUSE, WEST OF MOSQUE,
MARADU P.O.

BY ADV. SRI.V.V.ASOKAN
SRI.PAUL ABRAHAM VAKKANAL

RESPONDENTS: RESPONDENTS:
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1. P.K. SHAMSUDHEEN, S/O. KOCHUMON,
PALIYATHAAZATH HOUSE, PERUMPILLISSERY P.O.,
CHERUPU, THRISSUR DISTRICT.

2. JOHNY, S/O. ULAHANNAN,
ATTUPURATH HOUSE, PALLIPARAMBUKAVU,
TRIUNITHURA.

3. THE ORIENTAL INSURANCE COMPANY LTD.,
M.G. ROAD, COCHIN-35.

BY ADV. SRI.M.JACOB MURICKAN FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.156 OF 2003

Dated 10th September, 2007

JUDGMENT

Koshy,J.

Appellant/claimant, an autorickshaw driver by profession, met with a motor accident by which he sustained serious injuries. As per the wound certificate, appellant sustained the following injuries:

> "Neck movements restricted due to slight pain.
> Abrasion right leg.
> Head injury."

Thereafter, he was treated and various medical bills were produced. Ext.A8 is the disability certificate issued by the General Hospital, Ernakulam which shows that he had 80% disability. That was not accepted because it was not proved by the concerned doctor. But, two doctors were examined as PWs 2 and 3 to prove the correctness of the above certificate. Prima facie, we are of the opinion that rejection of the disability certificate outrightly was not proper when two doctors gave evidence. A certificate issued by the Medical Board was produced before this court which reads as follows:

> "We, the members of Medical Board today on 24.1.2002 examined Sri.Kochumohammed, 56 years

whose thumb impression is given above for assessment of disabilities following on alleged Road Traffic Accident on 30.6.95. He was a driver by profession. He was treated at R.C.M.Hospital and City Hospital, Ernakulam and as per the treatment certificate and Wound Certificate, he sustained C3-4 and C4-5 disc prolapse with neurological deficit of all 4 limbs. He was treated surgically.

Now he complaints of

1. Stiffness of neck and all limbs
2. Inability to walk
3. Inability to take food with his hands.

On Examination

1. Neck movements are only 10^{o}
2. Involuntary movements of both fingers print
3. Cannot stand by himself
4. Flexor spur on all limbs prevent
5. Only Gr.II muscle power of lower limbs
6. Only Gr.III of muscle power upper limbs

Based on the above findings his permanent orthopaedic disability is assessed to be 80% (Eighty) as per Mc Brides guidelines."

It is contended by the learned counsel for the appellant that the appellant is unable to walk, that he is unable to drive the autorickshaw and that he became like a vegetable. It is further contended that he was the owner-cum-driver of the autorickshaw. Even an autorickshaw driver will get a minimum income of more than Rs.150/= per day. Since he was the owner also, fixation of income at Rs.1,800/= per month is also too low. Learned counsel for the respondents submitted that the Medical Board Certificate was produced in the appeal and it requires further evidence. It is well settled law that only just and reasonable compensation is to be

granted, but, it should not be too low amount concerned with the injuries. At the same time, it should not be exorbitant. Since we are of the opinion that Tribunal has not considered the facts in proper perspective, we set aside the award and remand the matter for fresh disposal. Both sides are allowed to adduce further evidence. Since the accident occurred in 1996, we direct the Motor Accidents Claims Tribunal to dispose of the matter as early as possible, in any event before the court closes for Christmas holidays. Findings regarding negligence and coverage of insurance already attained finality and those issues cannot be reopened. We also note that apart from the injuries and disabilities, his monthly wages assessed also has to be reworked while assessing quantum of compensation and a de novo award should be passed in all respects. Parties shall appear before the Tribunal on 24.9.2007.

Registry is directed to send a copy of this judgment with copy of the certificate issued by the Medical Board produced before this court to the Motor Accidents Claims Tribunal immediately.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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